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## II

### Statutes:

Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 821, as amended by the Act of February 7, 1942, c. 49, 56 Stat. 83, 15 U. S. C. 717, *et seq.*):

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1948

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No. —

FEDERAL POWER COMMISSION, PETITIONER

v.

EAST OHIO GAS COMPANY, ET AL.

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***PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT***

The Solicitor General, on behalf of the Federal Power Commission, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on February 14, 1949.

**OPINIONS BELOW**

The opinion of the Federal Power Commission (R. 170-180) is reported at 74 PUR(NS) 256. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 197-206) is not yet officially reported.

**JURISDICTION**

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on February 14, 1949 (R. 206). The jurisdiction of this Court is invoked under Section 19

(b) of the Natural Gas Act and under 28 U. S. C. 1254(1).

#### QUESTION PRESENTED

The East Ohio Gas Company owns and operates in the State of Ohio natural-gas transmission pipe lines which connect with the West Virginia transmission lines of Hope Natural Gas Company, an affiliate, at the Ohio-West Virginia state line and with the interstate pipe-line system of Panhandle Eastern Pipe Line Company at Maumee, Ohio. East Ohio purchases 85% of the natural gas handled by it from Hope and Panhandle, which transport it from sources outside Ohio to the points of connection with East Ohio's transmission pipe lines. East Ohio takes delivery of the gas at these points and transports it by means of its high-pressure transmission pipe lines to its local distribution systems in Ohio. The main question presented is whether, by virtue of its ownership and operation of these transmission pipe lines, East Ohio is engaged in "interstate commerce" within the meaning of Section 2(7) of the Natural Gas Act and hence is a "natural-gas company," subject to the Federal Power Commission's jurisdiction under that Act.<sup>1</sup>

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<sup>1</sup> A subsidiary question presented is whether, assuming East Ohio is a natural-gas company, the Commission's directions that East Ohio comply with its general accounting orders, and file annual reports, are arbitrary, unreasonable and invalid under the Natural Gas Act and the Constitution. The court below, in view of its disposition of the main question, found it unnecessary to pass on this question.



### STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938 (52 Stat. 821, as amended by 56 Stat. 831, 15 U. S. C. 717 *et seq.*) are set forth in the Appendix, *infra*, pp. 21-26.

### STATEMENT

On its own motion and on the complaint of the City of Cleveland, Ohio, the Federal Power Commission (Commission) on February 14, 1939, instituted an investigation into the cost of transporting natural gas by The East Ohio Gas Company (East Ohio) from the Ohio River to the city-gate of Cleveland and directed the company to file an inventory and a statement of the original cost of its property used and useful in such transportation (R. 100-103, 130). The Commission denied East Ohio's application for hearing, rehearing and stay of this order (R. 131)<sup>2</sup> (1 F. P. C. 586, 595) and on February 3, 1943, it ordered a hearing, on a date there fixed, to determine whether East Ohio was a "natural-gas company" (R. 134), which hearing, however, was later postponed until further order of the Commission (R. 134).

Meanwhile, three Ohio cities (Euclid, Cleveland and Lakewood), in 1942, filed complaints with the Commission praying that the Commission redetermine East Ohio to be a "natural-gas company"

<sup>2</sup> East Ohio's petition for review of this denial was dismissed by the Court of Appeals for the Sixth Circuit on the ground that the Commission's order was preliminary and not reviewable (R. 132). *East Ohio Gas Co. v. Federal Power Commission*, 115 F. 2d 385 (C. A. 6).

and require the company to comply with previous Commission orders and "to ascertain and submit its original cost" (R. 109-113, 114-119, 119-124).

East Ohio moved to dismiss these complaints (R. 125-129). In its order of February 16, 1946, in which it reviewed the previous proceedings involving East Ohio,<sup>3</sup> the Commission denied the company's motions to dismiss (R. 129, 135); it ordered the complaints of the three cities consolidated with its original order of February 14, 1939, and set a date for hearing at which East Ohio was directed to show cause why it should not be held to be a "natural-gas company" and why it had not

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<sup>3</sup> Following the 1942 amendment of Section 7 of the Act expanding the Commission's certificate jurisdiction (56 Stat. 83), East Ohio, on March 24, 1943, had applied for a certificate of public convenience and necessity for a proposed 112-mile pipe line connecting with the interstate pipe lines of Panhandle Eastern Pipe Line Company (Panhandle). In the alternative, it requested the Commission to find that it was not, and would not thereby become a "natural-gas company." The Commission, on November 30, 1943, found East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act and granted the requested certificate (R. 134, 148). 4 F. P. C. 15, 19. Without seeking review of the Commission's order, East Ohio accepted the certificate and has since been operating thereunder (R. 134, 148-149). See *infra*, pp. 8-9. East Ohio also applied for a "grandfather" certificate for its facilities in operation on February 7, 1942, the date of the 1942 amendment, or alternatively for a finding that it was not a "natural-gas company." The Commission, on January 18, 1944, in issuing the "grandfather" certificate, again found East Ohio to be a "natural-gas company" (R. 134, 149). 4 F. P. C. 497. Without seeking judicial review of this finding, East Ohio accepted the certificate (R. 149).

complied with the Commission's cost and accounting orders (R. 129-136). 5 F. P. C. 371. Following hearings held on March 19-20, 1946, the Commission, in an order dated June 25, 1946, made the following undisputed findings:

East Ohio, an Ohio corporation with its principal place of business at Cleveland, is and has been since some time prior to June 21, 1938, the date of the enactment of the Natural Gas Act, engaged in the business of producing, purchasing, transporting and distributing natural gas in Ohio by means of an extensive pipe-line system (R. 142). In addition to selling natural gas at retail to about 550,000 ultimate consumers in 69 communities in eastern Ohio, including Cleveland, Akron, Canton, Massillon and Youngstown (R. 89, 142), East Ohio owns and operates within the State of Ohio in the regular course of its business a number of large-diameter, high-pressure transmission lines which it uses to transport gas produced outside Ohio to its local distribution systems and which connect with the interstate transmission facilities of its affiliate, Hope Natural Gas Company (Hope), and of Panhandle. During 1945, East Ohio handled about 79 million Mcf of natural gas, 85% of which was purchased from out-of-state sources (62% from Hope and 23% from Panhandle); the remainder of the gas handled originated in Ohio and was produced or purchased by East Ohio (R. 147). None of this gas is sold for resale, but is sold locally



at rates fixed in accordance with the applicable Ohio law.

*A. Pipe Lines Connecting With Hope:* Four of East Ohio's transmission pipe lines, 18 and 20 inches in diameter, connect at the Ohio-West Virginia state line on the Ohio River with, and are direct continuations of, Hope's West Virginia transmission pipe lines from which East Ohio, until it began purchasing gas from Panhandle in 1944 (*infra*, pp. 8-9), procured 70% to 85% of its supply (R. 144). Three of the pipe lines run northwesterly to Cleveland, about 120 miles (R. 91, 98, 143). The fourth extends in a northwesterly direction to the company's Gross Farm valve station near Canton, at which point two pipe lines, each designated "Youngstown Branch line," one 16 inches and the other 14 inches in diameter, extend in a northeasterly direction toward Youngstown (R. 91, 143).

In accordance with the contracts between East Ohio and Hope, Hope delivers to East Ohio, at these points of connection at the Ohio-West Virginia state line, gas produced outside of Ohio<sup>4</sup> at sufficiently high pressures so that the greater portion of the gas is carried through East Ohio's transmission pipe lines without additional compression to most of its local distribution systems in Ohio,

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<sup>4</sup>Formerly the gas so delivered was produced in West Virginia, but more recently it has consisted of gas, some of which is produced in West Virginia and the rest purchased by Hope from Tennessee Gas and Transmission Company which transports it from Texas (R. 144).

including those in and in the vicinity of Canton, Massillon, Akron and Cleveland (R. 144, 145). The remainder of the gas so delivered is carried to the Youngstown-Warren-Niles area, and is propelled by the pressure at which it is received from Hope plus additional pressure obtained by repumping at East Ohio's Gross Farm compressor station (R. 145). Hope's West Virginia compressor station, its transmission pipe lines from there to the Ohio-West Virginia state line, and East Ohio's pipe lines<sup>5</sup> are operated and controlled as a single unit or system respecting the pressures and volume of natural gas delivered by Hope (R. 145). By these operations, gas flows continuously and uninterruptedly from Hope's compressor station in West Virginia to East Ohio's points of distribution in Ohio (R. 145).

These transmission facilities of East Ohio are also used to carry natural gas produced in Ohio to points of local distribution in East Ohio's system (R. 144). The first Ohio-produced gas entering these lines is introduced at a point approximately 40 miles from the state line (R. 144).<sup>6</sup>

<sup>5</sup> Also a part of East Ohio's transmission system for the transportation of this gas is T. P. L. No. 1, a 12-inch transmission pipe line, which commences at a place called McKee Farm in Summit County, Ohio, and which extends northerly to Cleveland (R. 91, 143):

<sup>6</sup> East Ohio also maintains connection with the transmission facilities of Peoples Natural Gas Company at the Ohio-Pennsylvania state line at a point near Peterburg, Ohio, where occasionally, at times of heavy demands, comparatively small quantities of gas are sold and delivered to East Ohio by Hope through the agency of Peoples (R. 145-146).

B. *Connection with Panhandle*: Since March 1944, East Ohio has owned and operated, in accordance with the certificate of public convenience and necessity issued it by the Commission (*supra*, p. 4, fn. 3), a 20-inch transmission pipe line, 112 miles long, which commences at a point near Maumee, Ohio, about 10 miles inside the western border of Ohio, and extends in a general easterly direction to the Cleveland-Akron area (R. 91, 95, 146). At the west end of this line, the pipe line connects with a 16-inch transmission pipe line of Panhandle, which connects at a point in Ohio near the Ohio-Michigan boundary with Panhandle's 22-inch transmission pipe line which in turn extends into Indiana and thence through several states to Texas, Oklahoma and Kansas (R. 146). The portion of Panhandle's 22-inch pipe line in Ohio is a direct continuation of the portion that lies within Indiana; Panhandle's 16-inch pipe line in Ohio extending therefrom and East Ohio's connecting line are direct extensions of Panhandle's 22-inch line (R. 146).

The gas (50,000 Mcf per day) which East Ohio purchases from Panhandle is produced in Texas, Oklahoma and Kansas and transported by Panhandle to the point of connection with East Ohio (R. 147). From that point, East Ohio takes delivery of this gas and carries it in bulk partly through a branch transmission pipe line to Cleveland, and the remainder on into East Ohio's main transmission system, south of Cleveland (R. 147). In accordance with the contract between Panhandle

and East Ohio, Panhandle maintains such high pressures in its 22-inch line at the point of connection with its 16-inch line that the gas is carried through East Ohio's transmission lines to the points of destination without additional compression, except that portion of the gas which is transmitted to the Youngstown-Warren-Niles area and to storage which receives additional pressure at East Ohio's Gross Farm valve station (R. 147). By these operations the natural gas flows continuously and uninterruptedly from the points of production in Texas, Oklahoma and Kansas to the points of local distribution and storage areas in Ohio (R. 147).

Based on these facts, the Commission found that these transmission pipe lines of East Ohio were not facilities used for local distribution but were facilities for the transportation of natural gas in interstate commerce (R. 148). It further found that East Ohio is "engaged in the transportation of natural gas in interstate commerce" and is a "natural-gas company" within the meaning of the Natural Gas Act (R. 148). Accordingly, it ordered East Ohio to comply with all previous Commission general accounting orders applicable to natural-gas companies and with all previous Commission orders requiring the filing of annual reports applicable to natural-gas companies (R. 150).

East Ohio, the State of Ohio, and the Public Utilities Commission of Ohio applied on July 24, 1946, for rehearing and stay (R. 151-163, 163-169),

which the Commission granted (R. 169-170). On rehearing, the Commission in a detailed opinion (R. 170-180)<sup>7</sup> reviewed East Ohio's facilities and operations and noted that it "failed, after careful deliberation, to find good cause to depart from [its] previous findings" (R. 179). It expressly rejected East Ohio's contention that its 650-mile pipe-line transportation system was a mere incident to local distribution (R. 174-176, 179). It further held that the finding that East Ohio is a natural-gas company "will, as we view it, in no manner interfere with the exercise by the State of Ohio of its authority to regulate the operations of the company in its business of local distribution" (R. 179-180). Accordingly, it dissolved its stay and directed that its order of June 25, 1946, be made effective (R. 180). The further applications of East Ohio, the State of Ohio, and the Public Utilities Commission of Ohio for rehearing (R. 180-188; 188-195) were denied by the Commission (R. 195-196).

On petition of review, the Court of Appeals, in an opinion by Judge Clark, reversed (R. 197-206).

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<sup>7</sup> As noted in the Commission's opinion, East Ohio had, concurrently with this proceeding, on January 18, 1946, applied for a certificate of public convenience and necessity for a 95-mile transmission pipe line, or in the alternative for a finding that it was not a "natural-gas company." (R. 170, fn. 1). The Commission on July 3, 1946, granted the requested certificate again based on a finding that East Ohio was a "natural-gas company." 5 F. P. C. 639. As in the other instances (*supra*, p. 4, fn. 3), East Ohio accepted this certificate and has operated thereunder, without seeking judicial review.



Judge Edgerton dissented in a separate opinion (R. 205-206).

**SPECIFICATION OF ERRORS TO BE URGED**

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that East Ohio is not a "natural-gas company" subject to the Commission's jurisdiction under the Natural Gas Act.

2. In holding that the definition of "interstate commerce" contained in Section 2(7) of the Act is not coextensive with its ordinary and well-established meaning.

3. In holding that East Ohio's transmission pipe lines are devoted solely to the local distribution of natural gas to local consumers within the provision of Section 1(b) exempting such facilities from Commission jurisdiction.

4. In holding that East Ohio is completely and validly regulated by the Ohio Commission.

5. In holding that the assertion of Commission jurisdiction over East Ohio would constitute "unnecessary, undesirable and unintended usurpation of state regulatory authority."

6. In failing to hold that the Commission's order directing East Ohio to comply with its general accounting orders and to file annual reports was reasonable and valid.

7. In reversing the order of the Commission.

**REASONS FOR GRANTING THE WRIT**

1. The Natural Gas Act applies "to the transportation of natural gas \* \* \* in interstate com-

merce" (Section 1 (b), *infra*, p. 21), and "natural-gas company" is defined in the Act as a person engaged, *inter alia*, in "the transportation of natural gas in interstate commerce" (Section 2(6), *infra*, p. 21). Section 2(7) defines "interstate commerce" as meaning "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

At least since *The Daniel Ball*, 10 Wall. 557, it has been established that a person is engaged in interstate commerce when he transports a product on a portion of an interstate through journey even though only within a single state. E. g., *United States v. Yellow Cab Co.*, 332 U. S. 218, 228-229. In applying this familiar rule, this Court has found that most of the very pipelines involved in this case—those between the West Virginia connections and the distribution systems—are in interstate commerce, and this decision is, of course, equally applicable to respondent's other lines. *East Ohio Gas Co. v. Tax Commission*, 283 U.S. 465.<sup>8</sup> And the

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<sup>8</sup> The Court stated in the *East Ohio Gas Co. v. Tax Commission* case, 283 U.S. at 470:

The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure transmission lines to their connection with its local system is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes while it is en route from State to State is not determi-

same principle has been applied in other cases in the same field. *Public Utilities Commission v. Attleboro Steam and Electric Co.*, 273 U.S. 83; *Peoples Natural Gas Co. v. Public Service Commission*, 270 U.S. 550, 554, and cases cited;<sup>9</sup> *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U.S. 682, 688.

The court below has held that the definition of interstate commerce in the Natural Gas Act excludes transportation within a single state as part of an interstate journey—a contention not urged by any of the parties below. But the phrase “commerce between any point in a State and any point outside thereof” in the statutory definition clearly is as broad as “interstate commerce” itself as defined in the cited cases. Respondent is engaged in commerce between points in two states when it transports gas on the Ohio portion of a continuous

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native of the question where interstate commerce ends.

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<sup>9</sup> The *Peoples Gas* case is also directly in point, as appears from the following excerpt from the opinion (270 U.S. at 554):

As respects the West Virginia gas we are of opinion, in view of its continuous transportation from the places of production in one State to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody and title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business.

through movement from other states to an Ohio destination.

The basis for the ruling below, that the statutory definition of interstate commerce is narrower than the meaning which this Court's decisions had previously given to the concept of "interstate commerce", was explicitly rejected by this Court in *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U.S. 682, 688, wherein the Court stated that:

There is nothing in the terms of the Act or in its legislative history to indicate that Congress intended that a more restricted meaning be attributed to the phrase "in interstate commerce" than that which theretofore had been given to it in the opinions of this Court.

In the *Interstate* case, the transactions held to be interstate commerce consisted of sales by the respondent company, within the state in which the gas was produced, to other companies which would transport the gas across state lines. Obviously these activities occurring within the state of origin of the interstate movement are no more a part thereof than respondent's transportation of the gas within the state of destination.

Accordingly we think it clear that the holding below that respondent is not engaged in the transportation of gas in interstate commerce is in conflict not only with established principles but with decisions of this Court which are directly in point.<sup>10</sup>

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<sup>10</sup> The citation by the court below of its decision in *Border Pipe Line Co. v. Federal Power Commission*, 171 F. 2d 149,

2. The court below also held that respondent came within the exception for "local distribution of natural gas" in Section 1 (b) of the Act, inasmuch as, in its view of the facts, respondent "is engaged *solely* in the local distribution of natural gas to local consumers" (R. 202). But the undisputed facts plainly demonstrate that the high pressure lines from the West Virginia border and Maumee to the local distributing points are not a part of local distribution.<sup>11</sup> The reasoning of the court below that respondent was engaged

as supporting its conclusion here, is, we submit, compounding error upon error. The court there held that a company which transported natural gas in Texas to a point on the Rio Grande River, where it sold the gas for further transportation and use in Mexico was not a "natural-gas company." This was based on the court's misconstruction of the statutory definition of interstate commerce—"commerce between any point in a State and any point outside thereof, \* \* \* but only insofar as such commerce takes place within the United States"—as not embracing the domestic phase of the foreign commerce. Cf. *In re Reynosa Pipe Line Co.*, 5 F.P.C. 130, 136-137, affirmed *sub nom. Cia Mexicana de Gas v. F. P. C.*, 167 F. 2d 804 (C. A. 5); H. Rep. No. 1290 to accompany H.R. 5249, 77th Cong., 1st sess., pp. 3-4; *230 Boxes, More or Less, of Fish v. United States*, 168 F. 2d 361 (C.A. 6). Review of that decision by this Court was not sought for reasons other than an acceptance of its soundness.

<sup>11</sup> Recognition that local distribution, as distinguished from transportation, does not commence until after town-border regulating stations are reached, appears in a brief issued by a committee representing the Natural Gas Industry, and filed by Mr. William A. Dougherty, one of respondent's counsel below, with the House Committee on Interstate and Foreign Commerce, holding hearings on H. R. 5423, a predecessor bill to the Natural Gas Act (Hearings on H. R. 5423, 74th Cong., 1st sess., pp. 1786, 1790).



solely in local distribution because "all of its property \* \* \* is devoted to that sole purpose" (R. 202) would seriously impair the operation of many provisions of the Natural Gas Act, since virtually all natural gas transportation has for its ultimate purpose either local distribution or sale to industrial consumers, both of which are exempt from the jurisdiction of the Federal Commission. The Commission's finding that these transmission pipe lines are not "facilities used for the \* \* \* local distribution of natural gas" in interstate commerce (R. 144) was thus clearly a reasonable and proper one, amply supported by the evidence, and should have been accepted by the court below. See Natural Gas Act, Section 19(b), Appendix, *infra*, p. 26; *Roche-ster Telephone Corp. v. United States*, 307 U.S. 125, 145-146; *National Labor Relations Board v. Hearst Publications*, 322 U.S. 111, 130-131.

3. Inasmuch as the transportation here involved clearly comes within the statutory definitions, it is immaterial whether or not Ohio has regulated the same transactions, as the decision below seems to imply (R. 199-200). *Connecticut Light & Power Co. v. F. P. C.*, 324 U.S. 515, 533; cf. *Northwestern Electric Co. v. F. P. C.*, 321 U.S. 119. It is to be observed, however, that the Natural Gas Act was enacted in large part because this Court had held that a state could not regulate the portions of an interstate through journey taking place within its borders.<sup>12</sup> *Public Utilities Commission v. Attleboro*

<sup>12</sup> The statement quoted in the opinion below from the testimony of Mr. DeVane (R. 205) does not support the court's conclusion, as appears from its text.

*Steam and Electric Co.*, 273 U.S. 83; *Peoples Natural Gas Co. v. Public Service Commission*, 270 U.S. 550; *Public Utilities Commission v. United Fuel Gas Co.*, 317 U.S. 456; *Illinois Gas Co. v. Central Illinois Public Service Co.*, 314 U.S. 498.

Indeed, the history of the Natural Gas Act contains several express references to the East Ohio Company and to this Court's decision in the *East Ohio Tax* case as typical of the situations which the proposed legislation was designed to reach.<sup>13</sup> Thus an unsuccessful attempt was made in connection with H. R. 5423, 74th Cong., 1st sess. (a predecessor bill), to exempt companies such as East Ohio from the proposed regulation. The proposal provided that "after delivery of said gas to a distributing company for distribution to local consumers \* \* \* any transmission to such consumers shall be deemed to be intrastate commerce, or in local distribution not subject to the jurisdiction of the Commission." Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st sess., p. 1668. The proponent of the amendment stated that it was "drawn in the light of the decision of the United

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<sup>13</sup> See Final Report of the Federal Trade Commission made pursuant to S. R. 83, 70th Cong., 1st sess., S. Doc. 92, 70th Cong., 1st sess., Part 84-A, pp. 558, 560; Hearings before Subcommittee of House Committee on Interstate and Foreign Commerce on H. R. 11662 (predecessor bill), 74th Cong., 2d sess., pp. 14, 16, 17; Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st sess., pp. 1668, 1695.

States Supreme Court in *East Ohio Gas Co. v. Tax Commission*, 283 U.S. 465, 470." *Id.* at p. 1695. This amendment was not adopted, nor does any provision similar thereto appear in the Act as enacted.

Finally, the fact that respondent's rates would not be subject to regulation by the Commission is not material, for, as a natural-gas company within the meaning of the statute, respondent is required to obtain a certificate of necessity from the Commission, and other features of its activities are subject to Commission control.<sup>14</sup>

4. In addition to the fact that the question of East Ohio's status under the Natural Gas Act is important to the 550,000 ultimate consumers in the 69 Ohio communities served by East Ohio, review of

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<sup>14</sup> Section 5(b) of the Act, Appendix, *infra*, p. 22, specifically authorizes the Commission to investigate and determine the cost of "• • • transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas." Section 7, Appendix, *infra*, pp. 22-24, as originally enacted and as amended in 1942, vested in the Commission control over abandonments of service and the construction and extension of facilities. Section 8, Appendix, *infra*, pp. 24-25, vesting jurisdiction over accounting in the Commission, was designed to eliminate inflationary write-ups as well as to assure uniform accounting practices. The reports of the Federal Trade Commission made pursuant to S. Res. 83, 70th Cong., 1st sess., which Section 1(a) of the Act stated disclosed the necessity for federal regulation, show that "inflation of assets," "stock watering" and "misrepresentation of financial condition" among some natural-gas companies were "specific evils" in the industry. See Sen. Doc. 92, 70th Cong., 1st sess., Part 84-A, pp. 615-616; *id.*, Part 83, pp. 567-568; see, also, Hearings before the House

this decision is important in the administration of the Natural Gas Act, since there are many companies in the natural-gas industry which are engaged in activities in interstate commerce wholly within a single state. The Commission has already held several of these companies to be "natural-gas companies" subject to its jurisdiction under the Act. See, e.g., *Re El Paso Natural Gas Co., Southern California Gas Company and Southern Counties Gas Company of California*, 5 F.P.C. 115, 118, 120; *Re The River Gas Company*, 4 F.P.C. 10; *Central Illinois Public Service Company v. Panhandle Eastern Pipe Line Company*, 4 F.P.C., 1043, affirmed *sub nom Kentucky Natural Gas Corp. v. F.P.C.*, 159 F. 2d 215 (C.A. 6); *Re Republic Light, Heat and Power Company, Inc.*, 4 F.P.C. 884; *Re Producers Gas Company*, 4 F.P.C. 418; *Re Empire Gas & Fuel Company, Ltd.*, 3 F.P.C. 1099. There are now pending before the Commission 43 similar cases which involve, as here, transportation in interstate commerce wholly within a single state. Since the Commission's orders in these cases will all be subject to review by the court below, the only court of appeals authorized under Section 19 (b)

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Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st sess., pp. 115-116. In fact, the legislative history also shows that, in 1935, the investment accounts of East Ohio reflected write-ups amounting to \$15,454,511.65. See "Report on an Examination of Accounts and Records of The East Ohio Gas Co." (Sen. Doc. 92, 70th Cong., 1st sess., Part 83, p. 1695, *et seq.*; see, also, testimony of the F. T. C. accounting examiner (*id.*, p. 630 *et seq.*).

of the Act to entertain petitions for review of all Commission orders reviewable thereunder, the result, if this decision is not reversed, will be to create substantial gaps in the complementary regulatory scheme provided by Congress in enacting the Act, and hinder the Commission in protecting the ultimate consumer from exploitation.

**CONCLUSION**

For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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BRADFORD ROSS,  
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Federal Power Commission.

MAY 1949



## APPENDIX

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, as amended by 56 Stat. 83, 15 U. S. C. 717 *et seq.* are as follows:

Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

Sec. 2. When used in this Act, unless the context otherwise requires—

\* \* \* \* \*

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the

same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

\* \* \*  
 Sec. 5. \* \* \*

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

Sec. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

Sec. 7(a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or

artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extension thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale

of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

\* \* \* \* \*

Sec. 8. (a) Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as nec-

essary or appropriate for purposes of the administration of this Act: *Provided, however,* That nothing in this Act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

\* \* \* \* \*

Sec. 10. (a) Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other ~~reserves~~ cost of facilities, cost of maintenance and operation of



facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

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Sec. 19. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. \* \* \*